

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: Application of Norfolk Southern
Railway Company for approval to recon-
struct the Crossing of the North Ave-
nue/Brighton Road Bridge crossing above
its tracks in the City of Pittsburgh, Alleghe-
ny County (DOT No. 507450B), and for an
exemption From the Commission's over-
head clearances regulations.

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Docket No. A-2018-3006432

PROTEST OF THE CITY OF PITTSBURGH

AND NOW, comes the City of Pittsburgh ("Protestant") by and through its undersigned counsel and files this Protest to the above-captioned application for certain actions concerning the North Avenue/Brighton Road Bridge as set forth therein ("Application"). In support, the City respectfully represents:

1. The name and address of Protestant is the City of Pittsburgh ("City"), Room 313 City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.
2. The name and address of Petitioner's attorney is Anthony Bilan, Assistant Solicitor, Room 314, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.
3. On December 7, 2018, Norfolk Southern ("Applicant") filed the above captioned Application, attached hereto as Exhibit "1", with this Commission seeking approval to reconstruct North Avenue/Brighton Road Bridge in the City of Pittsburgh and seeking an exemption from the Commission's overhead clearances regulations.
4. Pursuant to the Application, Applicant has presented 30% preliminary construction plans and proposes to reconstruct the North Avenue/Brighton Road Bridge at its initial cost and expense in accordance with these plans.

5. Applicant cites the “public safety issues from the deteriorating condition” of the bridge as justification for their proposed actions in the Application.

6. Applicant further requests that after completion of the bridge repairs, Protestant be assigned future maintenance responsibility for the bridge substructure, superstructure, and roadway paving and sidewalks on the bridge and its approaches.

7. Protestant protests Applicant’s arrangement of responsibilities, Applicant’s negative characterization of the North Avenue/Brighton Road Bridge’s condition, and the content of Applicant’s plans.

8. Under Applicant’s arrangement of responsibilities, Applicant seeks to unilaterally provide the construction plans and carry out the bridge repair, but then have maintenance responsibilities assigned to the Protestant. Applicant likewise seeks to disclaim any ownership of the new bridge structure.

Protestant protests this arrangement.

8. Protestant also notes that Applicant’s arrangement is inconsistent with available information on the assignment of responsibilities. The Application notes that pursuant to a 1929 Agreement, the Pennsylvania Railroad Company accepted ownership of the new bridge along with maintenance of the reconstructed bridge at its cost, exclusive of the roadway surface.

9. PennDOT’s Bridge Management System currently notes that the North Avenue/Brighton Road Bridge cites the “Railroad” as both owner of the bridge and as maintaining the entire structure exclusive of the road, as indicated in the attached Exhibit “2”.

10. Pursuant to the Commission’s Opinion and Order entered October 26, 2010, Protestant is the party charged by the Commission with the responsibility to advance construction plans and conduct the repair work at its initial cost and expense.

11. Applicant justifies their preferred arrangement due to “public safety issues from the deteriorating condition of the bridge.”

12. However, Protestant notes that there are no current immediate emergency maintenance items

indicated by the Pennsylvania Department of Transportation with respect to the North Avenue/Brighton Road Bridge and any previous issues were mitigated by Protestant.

13. Finally, Applicant's 30% plans do not adequately address the particular issues associated with this site or the needs of the community at-large. Applicant should not be permitted to proceed using these plans and Protestant protests acceptance of any maintenance responsibilities or ownership of a structure built by these plans.

14. The site in question is squarely in an urban residential area alongside vehicular and pedestrian traffic and adjacent to or within sites of historical, recreational, and conservational significance. Protestant has concluded that Applicant's 30% plans would be disruptive to the residential and multi-model fabric of the site.

15. Any construction plans for the site must conform to characteristics sufficiently protective of the health, safety and welfare of the community, including but not limited to the following:

- A. Existing roadway and sidewalk profile grade and elevation must be maintained;
- B. City street right-of-way and cart way dimensions must be maintained;
- C. All improvements must be made within the existing right-of-way;
- D. Sidewalks must be at grade with the roadway, a retaining wall between the sidewalk and street is not acceptable;
- D. Sidewalks must be continuous, bifurcated sidewalks are not acceptable;
- E. Any new structure must be supported by new abutments;
- F. All right-of-way stormwater must flow to the street;
- G. Stormwater inlets must be at gutter line and all inlets must be within the cart way of the street.

Applicant's plans do not conform to these specifications.

16. Protestant specifically notes that Applicant's proposed raising of the North Avenue/Brighton

Road Bridge would disrupt the existing roadway and sidewalk profile grade and elevation. The Pennsylvania Commonwealth Court addressed other detriments to the area of a proposed bridge raising:

“Just because the PUC under its own regulations is required to impose an overhead clearance of 22 feet unless the railroad seeks an exemption does not necessarily mean that the Bridges have to be re-constructed to achieve that height clearance **because that goal could also be achieved by lowering the tracks**. There is no dispute that the site is historical in nature in that it was created at the time of the Revolutionary War. If the Bridges are raised, that will have a severe impact on the park due to longer and higher street approaches to the Bridges and that could impact its historic nature. It is also undisputed that the park is an important recreational asset that could also be undermined by the increased height of the Bridges. One or both of those concerns seemed to have been taken into consideration by placing the railroad line in a cut so as not to visually impact the park when the line was constructed. Also, the PUC is constitutionally required to take those concerns into consideration under Article I, Section 27 of the Pennsylvania Constitution which declares the people's right to the preservation of the natural, scenic, historical and esthetic values of the environment and further provides that the public natural resources are the common property of all the people.

Norfolk Southern Railway Co. v. Pa Public Utility Comm., 870 A.2d 942, 951 (2005) (emphasis added).

Potential construction plans must satisfactorily address any potential impacts to the historical and recreational character of the area.

17. Protestant reserves the right to raise further arguments or respond to other parties as the proceedings develop.

RESPECTFULLY SUBMITTED,

BY: Anthony Bilan
Anthony Bilan
Counsel for the City of Pittsburgh

EXHIBIT 1

Nauman Smith

Attorneys At Law

Please Reply to:
P. O. Box 840
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr.
E-mail: bdunlapjr@nssh.com
Telephone Extension: 121

December 7, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

RE: **Application of Norfolk Southern Railway Company for approval to reconstruct the crossing of the North Avenue/Brighton Road bridge crossing above its tracks in the City of Pittsburgh, Allegheny County (DOT No. 507450B), and for an exemption from the Commission's overhead clearance regulations**
Docket No. A-2018-

Dear Secretary Chiavetta:

Enclosed for filing please find Norfolk Southern Railway Company's Application to reconstruct the public rail-highway crossing as outlined above. Copies of the Application have been served upon all interested parties as indicated on the included Certificate of Service.

Thank you for your attention to this filing request.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr/lp
Enclosures
cc: per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Norfolk Southern Railway :
Company for approval to reconstruct the :
crossing of the North Avenue/Brighton : Docket No. A-2018-
Road bridge crossing above its tracks in :
the City of Pittsburgh, Allegheny County : *Filed Electronically*
(DOT No. 507450B), and for an exemption :
from the Commission's overhead :
clearance regulations :

To the Pennsylvania Public Utility Commission:

Norfolk Southern Railway Company ("Norfolk Southern"), by and through its attorneys, NAUMAN, SMITH, SHISSLER & HALL, LLP, hereby files this Application to reconstruct the public rail-highway crossing where North Avenue/Brighton Road ("DOT #507450B") crosses above its tracks in the City of Pittsburgh, Allegheny County, Pennsylvania ("North Avenue Bridge"), and for a clearance exemption in connection therewith, pursuant to the provisions of 66 Pa.C.S. § 2702 and 52 Pa. Code §§5.13(a) and 33.127(b), based upon the following:

1. The name and address of Applicant is Norfolk Southern Railway Company, Shawn Starling, P.E., Senior Engineer Public Improvements, 1200 Peachtree Street, N.E., Atlanta, Georgia 30309.
2. The name and address of the attorney for the Applicant is Benjamin C. Dunlap, Jr., Esquire, Nauman, Smith, Shissler & Hall, LLP, 200 North Third Street, 18th Floor, P.O. Box 840, Harrisburg, Pennsylvania 17108-0840.
3. The Applicant is a Virginia corporation authorized to transact business in the Commonwealth of Pennsylvania. The Applicant is a freight railroad engaged in the business of

the transportation of property and makes this application pursuant to 66 Pa.C.S. §2702 and 52 Pa. Code § 5.13(a).

4. Norfolk Southern proposes to reconstruct the existing North Avenue Bridge structure, pursuant to the 30% preliminary plans attached hereto as Exhibit "A".

5. The North Avenue Bridge crossing is located at milepost PC-1.60 on Norfolk Southern's Pittsburgh Line. A map of the project's location is attached hereto as Exhibit "B".

6. The North Avenue Bridge was originally constructed in 1901 by the Pennsylvania Railroad Company ("PRR"). It was reconstructed pursuant to a 1929 Agreement between the PRR and the City of Pittsburgh ("City"), as approved by the Pennsylvania Public Service Commission ("PSC") on June 10, 1929, in a Certificate of Public Convenience at Docket No. A-20911-1929.

7. Pursuant to the 1929 Agreement, the PRR accepted ownership of the new bridge. The PRR also accepted maintenance of the reconstructed bridge at its cost, exclusive of the roadway surface.

8. On November 4, 2002, the City filed an Application at Docket No. A-00119379, seeking approval for the alteration of the North Avenue Bridge, along with crossings at Ridge Avenue and West Ohio Street in the City.

9. Following a hearing, the issuance of an Opinion and Order entered July 26, 2004, and appeal to the Commonwealth Court resulting in a remand to the Commission, the City filed an Amended Application on May 11, 2006. This Amended Application still sought approval to alter the North Avenue Bridge, to provide necessary structural repairs, but now sought to abolish the Ridge Avenue crossing and reconstruct the West Ohio Street crossing, instead of merely altering the latter two bridges.

10. Following additional proceedings before the Commission, it issued an Order entered August 21, 2006, adopting the Recommended Decision Upon Remand at Docket No. A-00119379, ordering the City, at its initial cost and expense, within thirty-one (31) months from the date of issuance of the Opinion and Order, to prepare and submit a set of detailed construction plans, *inter alia*:

(c) for the repair of the structure carrying North Avenue and Brighton Road over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh; the said repairs to include, but not be limited to, repairs to the north end of the west girder and to floor beam No. 29 and the reconstruction of the sidewalks; the said structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads.

See Opinion and Order entered August 21, 2006, attached hereto as Exhibit "C", at ordering paragraph 5(c).

11. Pursuant to ordering paragraph 7 of the Opinion and Order entered August 21, 2006, all repair work for the North Avenue Bridge was to be completed within two (2) years from the date of entry of the Commission's Order approving the plans.

12. The City and Norfolk Southern thereafter submitted a Joint Motion for Clarification of the Opinion and Order entered August 21, 2006, regarding maintenance of existing clearances at the North Avenue Bridge following repairs. The Commission entered a new Opinion and Order on October 26, 2010, attached hereto as Exhibit "D", which denied the Joint Motion and set new requirements that the City prepare final construction plans within thirty-one (31) months from the date of entry of the new Opinion and Order and complete the repair work within two (2) years from the date of entry of the Commission's Order approving the plans.

13. The City has not filed plans for repairs to the North Avenue Bridge since the entry of the Commission's Opinion and Order on October 26, 2010.

14. Norfolk Southern is concerned about the current safety of the bridge, with the City neglecting to make the ordered repairs to the bridge in the eight years since the Commission's most recent Order.

15. Norfolk Southern is currently in the midst of the final segment of a series of clearance projects, including the North Avenue Bridge project, necessary to provide adequate overhead clearances on its Pittsburgh Line to accommodate double-stack container traffic.

16. Concurrent with the filing of the City's original Application on November 4, 2002, to alter the bridges, the City filed a separate Application at Docket No. A-00119738 for leave to continue existing prior overhead clearances of 19 feet over Norfolk Southern's tracks at the three bridges, to which Norfolk Southern protested. In the Commonwealth Court's decision in Norfolk Southern Railway Co. v. Pa Public Utility Comm., 870 A.2d 942 (2005), the Court held that only the railroad could seek an exemption from the Commission's clearance regulations pursuant to 52 Pa. Code §33.127(b). This requirement was reiterated in the Commission's Opinion and Order entered October 26, 2010, attached hereto as Exhibit "D", which denied the parties' Joint Motion for Clarification in part because it did not consider the Joint Motion as a carrier request for a clearance exemption.

17. Norfolk Southern requests an exemption from the Commission's clearance regulations at 52 Pa. Code § 33.121(a) to provide a vertical overhead clearance of 21' 4" at the subject crossing, pursuant to 52 Pa. Code § 33.127(b).

18. The Commission regulated clearance of 22 feet is not practically feasible at this location due to the presence of buildings and other existing constraints near the crossing that cannot be adjusted.

19. Norfolk Southern agrees to reconstruct the North Avenue Bridge initially at its cost and expense, subject to funding from the Pennsylvania Department of Transportation (“PennDOT”) for a portion of these costs, with such funding subject to PennDOT’s procedures for similar projects.

20. Norfolk Southern has been in negotiations with the City over the parameters of the bridge reconstruction but has been unable to reach agreement on plan specifications.

21. Norfolk Southern proposes to submit final construction plans for review and approval by October 31, 2019, and to complete the bridge reconstruction work within 24 months of approval of those plans.

22. The reconstruction schedule proposed by Norfolk Southern is dependent upon the timing to obtain environmental permits and approvals, if any, that may be necessary in connection with the project.

23. Following completion of the bridge reconstruction, Norfolk Southern requests that the City be assigned future maintenance responsibility for the bridge substructure, superstructure, and the roadway paving and sidewalks on the bridge and its approaches.

24. Norfolk Southern disclaims any ownership of the new bridge structure.

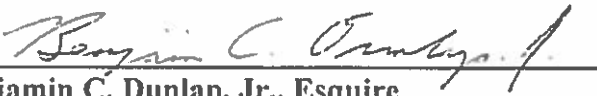
25. A list of all persons, parties and entities concerned in and potentially affected by the proposed project is attached hereto as Exhibit “E”.

26. Due to the public safety issues from the deteriorating condition of the North Avenue Bridge, the City’s failure to comply with the Commission’s prior Orders on bridge alterations, and the ongoing clearance project, Norfolk Southern requests that this matter be handled on an expedited basis.

WHEREFORE, Norfolk Southern Railway Company respectfully requests this Honorable Commission to approve its Application for the reconstruction of the North Avenue/Brighton Road Bridge in the City of Pittsburgh, Allegheny County, Pennsylvania, and to handle such matter on an expedited schedule.

Respectfully submitted,

NAUMAN, SMITH, SHISSLER & HALL, LLP


Benjamin C. Dunlap, Jr., Esquire
Supreme Court I.D. No. 66283
200 N. 3rd Street, 18th Floor, P. O. Box 840
Harrisburg, PA 17108-0840
Telephone: (717) 236-3010
Facsimile: (717) 234-1925
Counsel for Norfolk Southern Railway Company

Date: December 7, 2018

VERIFICATION

I, Kevin G. Hauschildt, Chief Engineer - Bridges, Norfolk Southern Corporation, do state that I am authorized to make this statement on behalf of Norfolk Southern Railway Company and verify that I have read the attached Application and that the within information is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the Application are that of counsel, Verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Kevin G. Hauschildt", is written over a horizontal line.

Kevin G. Hauschildt

Date: December 7, 2018

EXHIBIT A



PITTSBURGH SUBDIVISION VERTICAL CLEARANCE PROJECT

NORTH AVENUE BRIDGE

IN ALLEGHENY COUNTY

NORTH AVENUE
FROM STA 8+00.00 TO STA 14+50.00 LENGTH 650.00 FT 0.123 MI
BRIGHTON ROAD
FROM STA 101+00.00 TO STA 109+00.00 LENGTH 800.00 FT 0.152 MI



DESIGN DESIGNATION - NORTH AVENUE

TRAFFIC DATA	
HIGHWAY CLASSIFICATION	CURRENT YEAR ADT 10480 (2020)
HIGHWAY TYPOLOGY	DESIGN YEAR ADT 11320 (2040)
DESIGN SPEED	DIV 450
PAYEMENT WIDTH	0
SHOULDER WIDTH	3 - 11'-0" LANES
MEDIAN WIDTH	1
	22

DESIGN DESIGNATION - BRIGHTON ROAD

TRAFFIC DATA	
HIGHWAY CLASSIFICATION	CURRENT YEAR ADT 10480 (2020)
HIGHWAY TYPOLOGY	DESIGN YEAR ADT 11320 (2040)
DESIGN SPEED	DIV 450
PAYEMENT WIDTH	0
SHOULDER WIDTH	3 - 10'-0" LANES
MEDIAN WIDTH	1
	312
	72

30%
SUBMISSION

Michael Baker
INTERNATIONAL

NORFOLK SOUTHERN
RAILWAY COMPANY

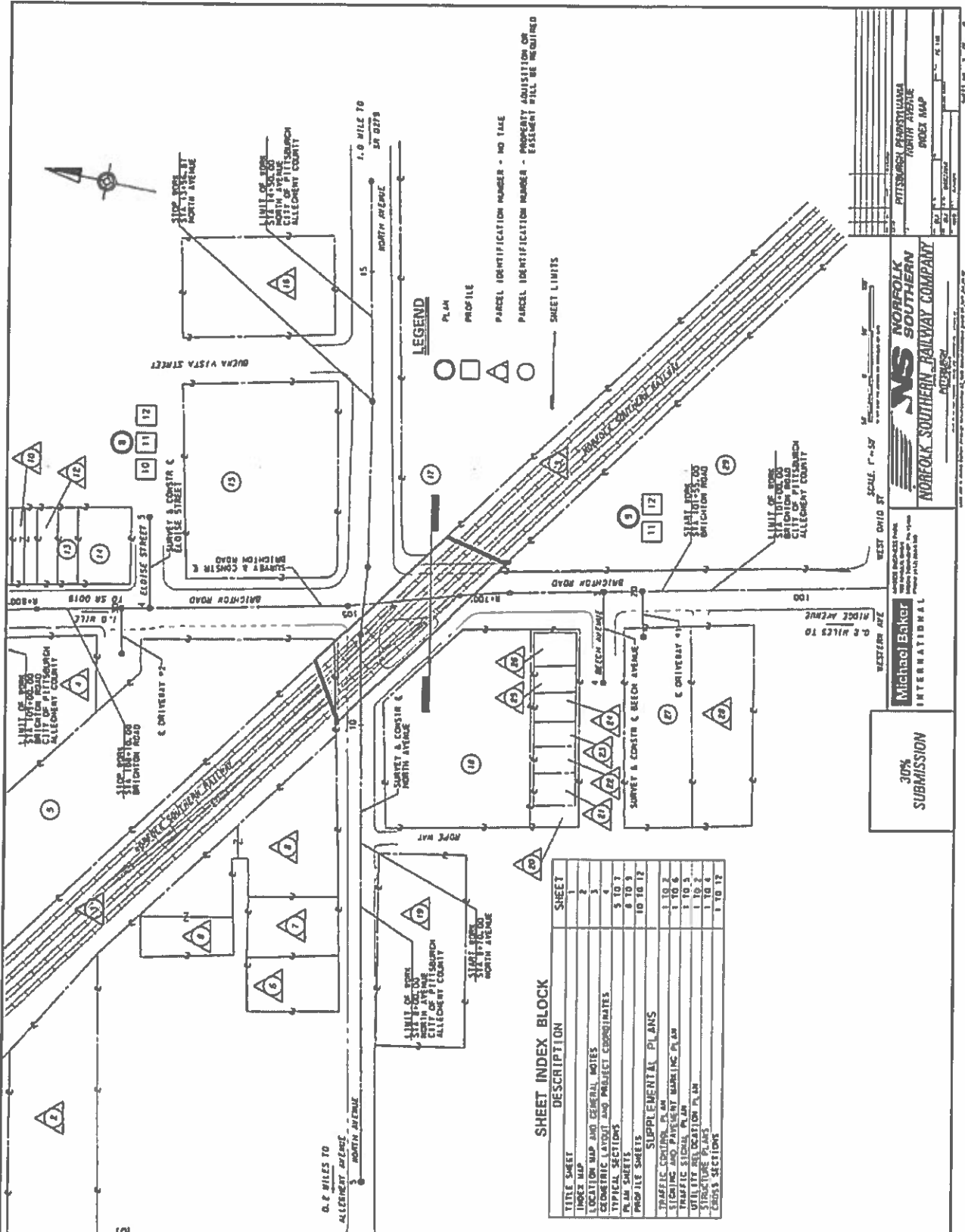
PITTSBURGH
NORTH AVENUE
TITLE SHEET

LIST OF PROPERTY OWNERS

1. SOUTHERN BROTHER FOUNDATION
2. NORFOLK SOUTHERN RAILWAY COMPANY
3. NCE ACQUISITIONS VII LP
4. BUNCKER COMPANY
5. STABLES DEVELOPMENT LP
6. GUNNAY LLC
7. 110 W NORTH AVE ASSOCIATES LP
8. CLYDE INC
9. LAWRENCE JAMES R
10. DOUBBLE JAMES M MCCOY
11. HIGGS MARSHALL & WENDY INC
12. WEST PARK GROUP HOLDING LIMITED PARTNERSHIP
13. TRINITY LUTHERAN CHURCH
14. CITY OF PITTSBURGH
15. WEST PARK RENAISSANCE I LP
16. GUNNAY LLC
17. ANDREW J. WOLFINGER
18. JAMES P & MARJORIE S UCHIMARA (W)
19. ROBERT W & MICHELE P JOHNSON (W)
20. DAVID A MARTINEZ JR
21. DANIEL F & ROSALIE AMBROSIO (W)
22. DAVID A MARTINEZ JR
23. LORETTA C TRUZZO
24. MARCIE LP
25. MICHAEL A & BETH A ZAPPA (W)
26. CITY OF PITTSBURGH

SHEET INDEX BLOCK

TITLE SHEET	DESCRIPTION	SHEET
1	INDEX MAP	1
2	GENERAL NOTES	2
3	GEOMETRIC LAYOUT AND PROJECT COORDINATES	3
4	TYPICAL SECTIONS	4
5 TO 7	PLAN SHEETS	5 TO 7
8 TO 12	PROFILE SHEETS	8 TO 12
13 TO 17	SUPPLEMENTAL PLANS	13 TO 17
18 TO 20	TRAFFIC CONTROL PLAN	18 TO 20
21 TO 23	SIGNALING AND PAVEMENT MARKING PLAN	21 TO 23
24 TO 26	TRAFFIC SIGNAL PLAN	24 TO 26
27 TO 29	UTILITY RELOCATION PLAN	27 TO 29
30 TO 32	STRUCTURE PLANS	30 TO 32
33 TO 35	CROSS SECTIONS	33 TO 35



LEGEND

- PLAN
- PROFILE
- PARCEL IDENTIFICATION NUMBER - NO TAKE
- PARCEL IDENTIFICATION NUMBER - PROPERTY ACQUISITION OR EASEMENT WILL BE REQUIRED
- SHEET LIMITS

30% SUBMISSION

Michael Baker INTERNATIONAL

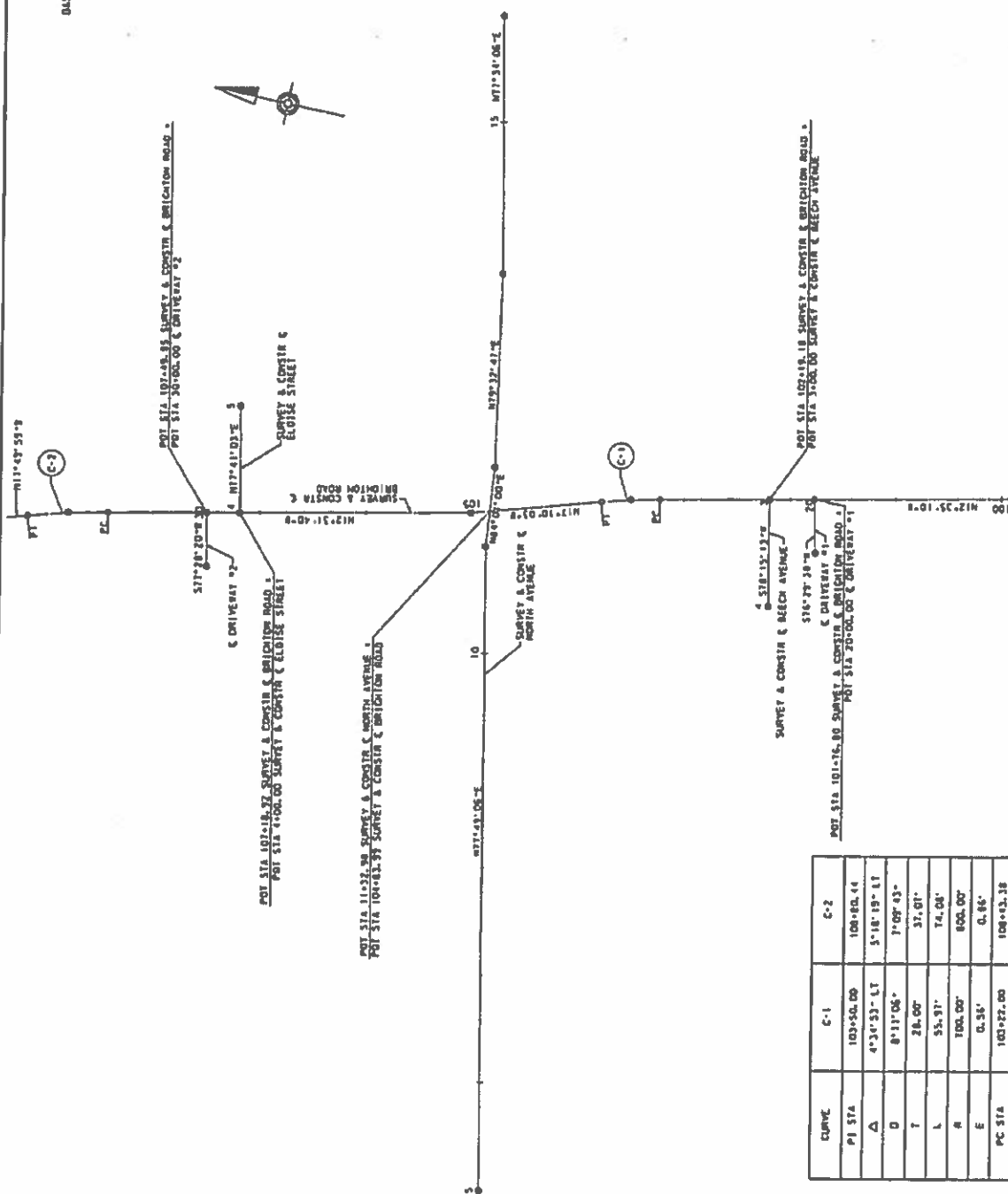
NORFOLK SOUTHERN RAILWAY COMPANY

PITTSBURGH, PENNSYLVANIA
NORTH AVENUE
INDEX MAP

BASED ON THE PENNSYLVANIA STATE PLANE COORDINATE SYSTEM (NAD83), SOUTH ZONE 37E21

ROUTE	STATION	POINT	NORTH	EAST	BEARING
SURVEY 2 CONTRACT ADMIN AVE	3+00.00	P01	413711.0815	133176.1543	N 77°49'06" E
	1+00.00	P01	413711.0815	133176.1543	N 77°49'06" E
	1+254.48	P1	413731.4172	133181.0000	N 77°49'06" E
	13+54.81	P1	413731.4172	133181.0000	N 77°49'06" E
	18+00.00	P01	413731.4172	133181.0000	N 77°49'06" E
SURVEY 2 CONTRACT UNION TOWNSHIP	38+50.00	P01	413709.9761	133181.1564	N 77°49'06" E
	103+22.00	P01	413709.9761	133181.1564	N 77°49'06" E
	103+50.00	P1	413715.0442	1331408.8055	N 77°49'06" E
	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
SURVEY 2 CONTRACT UNION TOWNSHIP	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
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SURVEY 2 CONTRACT UNION TOWNSHIP	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
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	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
	105+00.00	P1	413715.0442	1331408.8055	N 77°49'06" E
SURVEY 2 CONTRACT UNION TOWNSHIP	105+00.00	P1	413715.0442	1331408.8055	N 77°49'0

NOTE: FOUR (4) PLACE COORDINATES ARE USED FOR COMPUTATIONAL PURPOSES ONLY AND DO NOT IMPLY A PRECISION BEYOND TWO (2) PLACES.



curve	C-1	C-2
P1 STA	103+50.00	100+02.44
Δ	4°30'53"-LT	5°18'19"-LT
D	8°11'06"	7°09'43"
T	24.50'	37.01'
L	55.31'	74.04'
R	100.00'	600.00'
E	0.56'	0.46'
PC STA	103+72.00	100+13.38
PT STA	103+72.37	100+17.46
SE	NORMAL CROWN	NORMAL CROWN

SCALE: 1" = 50'

Michael Baker

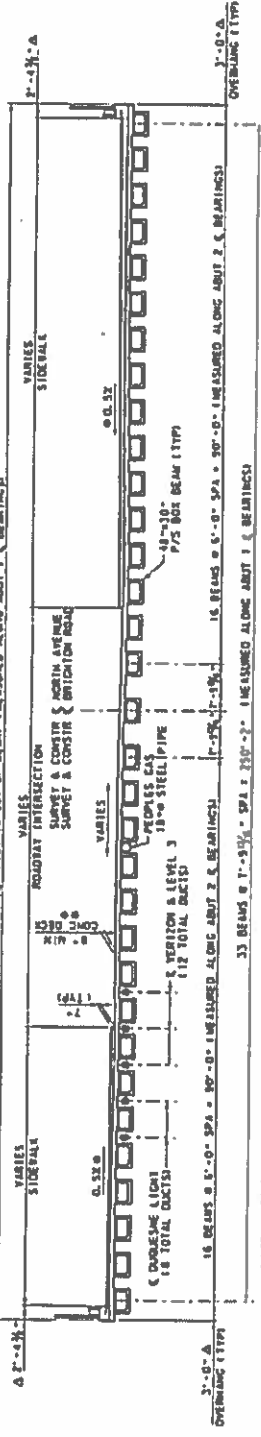
30% SUBMISSION

1000
1000
1000

Norfolk Southern
NORFOLK SOUTHERN

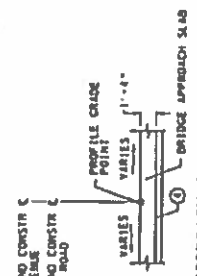
PITTSBURGH, PENNSYLVANIA
MCMIN AVE.

20'-1 1/2" OUT TO OUT OF DECK MEASURED ALONG ABOUT 2' BEARINGS
 3'-0" OUT TO OUT OF DECK MEASURED ALONG ABOUT 2' BEARINGS

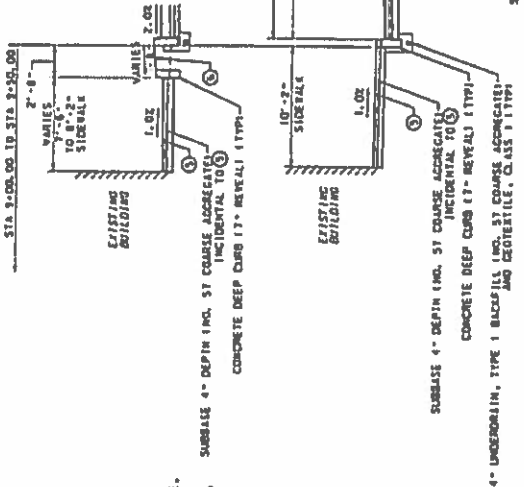


TYPICAL BRIDGE SECTION
 NORTH AVENUE
 STA 10+72.30 TO STA 10+75.41
 BRIDGTON ROAD
 STA 101+40.00 TO STA 101+45.38
 NOT TO SCALE

0 NORMAL TO BASELINE
 00 INCLUDES 1/2" INTEGRAL
 TEARING SURFACE
 Δ MEASURED NORMAL TO
 BEAM C



TYPICAL APPROACH SLAB SECTION
 NORTH AVENUE
 STA 10+02.31 TO STA 10+21.95
 BRIDGTON ROAD
 STA 101+24.10 TO STA 101+40.00
 NOT TO SCALE



TYPICAL SECTION
 NORTH AVENUE
 STA 8+42.00 TO STA 10+02.31
 NOT TO SCALE

- LEGEND**
- ① SUPERPAVE ASPHALT MIXTURE DESIGN, 9MA WEARING COURSE, 1 1/2" DEPTH
 - ② SUPERPAVE ASPHALT MIXTURE DESIGN, 9MA BINDER COURSE, 2 1/2" DEPTH
 - ③ SUPERPAVE ASPHALT MIXTURE DESIGN, 9MA BASE COURSE, 6" DEPTH
 - ④ SUBBASE 6" DEPTH (NO 2A)
 - ⑤ CEMENT CONCRETE SIDEWALK
 - ⑥ TOPSOIL FURNISHED AND PLACED 14" DEPTH

NOTES

- B-- SEEDING AND SOIL SUPPLEMENTS, FORMULA B.
- DT/A-- SOLID DOUBLE YELLOW HOT THERMOPLASTIC PAVEMENT MARKING WIDTH
- B/A-- SOLID WHITE HOT THERMOPLASTIC PAVEMENT MARKING WIDTH
- APPLY SEPARATE LAYER OF BITUMINOUS TACK COAT TO EACH COURSE, INCLUDING MULTIPLE LIFTS OF THE SAME MATERIAL.
- APPLY ALL ROADWAY JOINT SEALING IN ACCORDANCE WITH PUBLICATION 408 SECTION 408.

30% SUBMISSION

Michael Baker INTERNATIONAL

NORFOLK SOUTHERN RAILWAY COMPANY

MITCHELL PENNSYLVANIA
 NORTH AVENUE
 TYPICAL SECTIONS (SHEET 1 OF 3)

- ① SUPERPAVE ASPHALT MIXTURE DESIGN, 1½" DEPTH
- ② SUPERPAVE ASPHALT MIXTURE DESIGN, 2½" DEPTH
- ③ SUPERPAVE ASPHALT MIXTURE DESIGN, 3" DEPTH

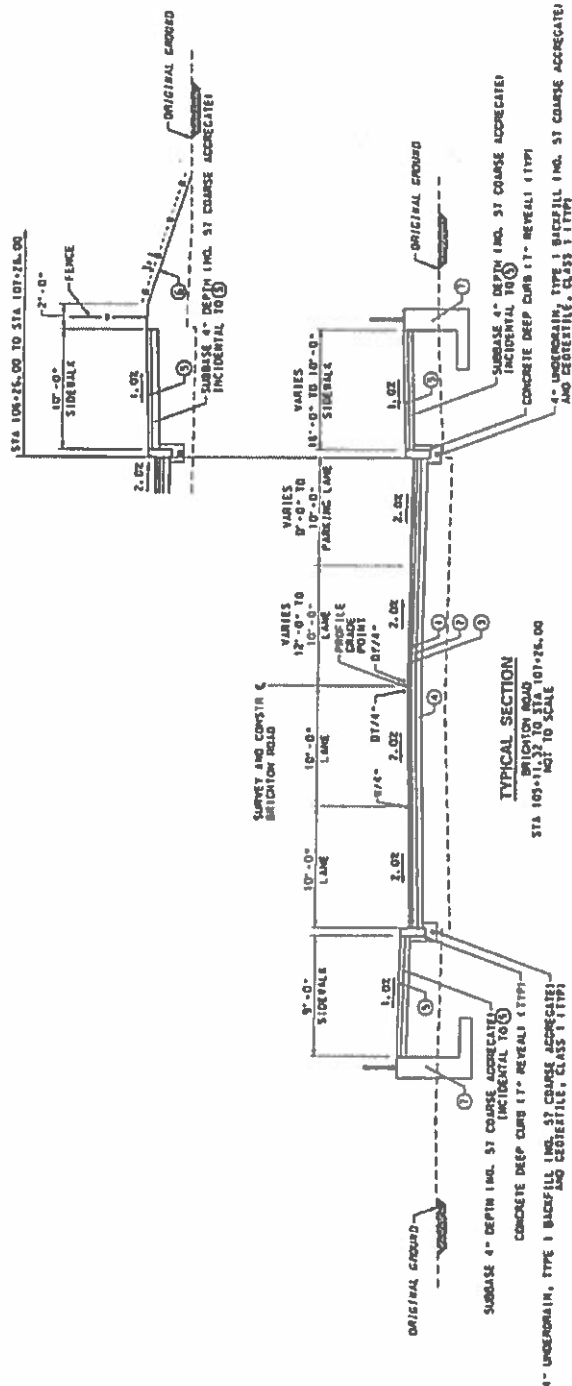
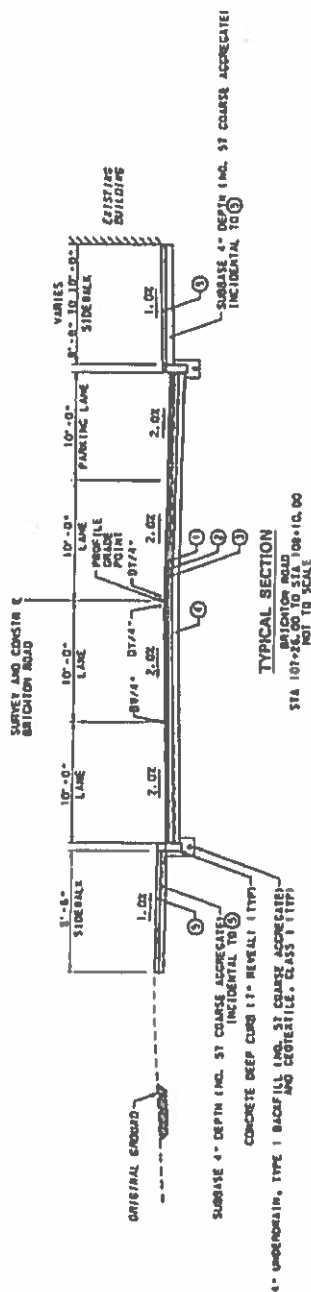
- ④ SUBBASE 6" DEPTH TWO 2:1
- ⑤ CEMENT CONCRETE SIDEWALK
- ⑥ TOPSOIL FURNISHED AND PLACED 14" DEPTH
- ⑦ TOE WALL WITH PEDESTRIAN RAILING

--- 0 -- SEEDING AND SOIL SUPPLEMENTS, FORMULA B.
AND MAXIMUM-5 HRS

- | | |
|-------|---|
| 37/4- | SOLID COULE YELLOW NOT THERMOPLASTIC
PAYMENT MARKING WIDTH |
| 8/4- | SOLID WHITE NOT THERMOPLASTIC
PAYMENT MARKING WIDTH |
| 9/4- | BROWN WHITE NOT THERMOPLASTIC
PAYMENT MARKING WIDTH |

APPLY SEPARATE LAYER OF BUTYLMASTIC TAPE COAT FOR EACH PAVING COURSE, INCLUDING MULTIPLE LIFTS OF THE SAME MATERIAL.

APPLY ALL SUBGRADE JOINT SEALING IN ACCORDANCE WITH PUBLICATION JDS SEALING 443.



30% SUBMISSION

Michael Baker

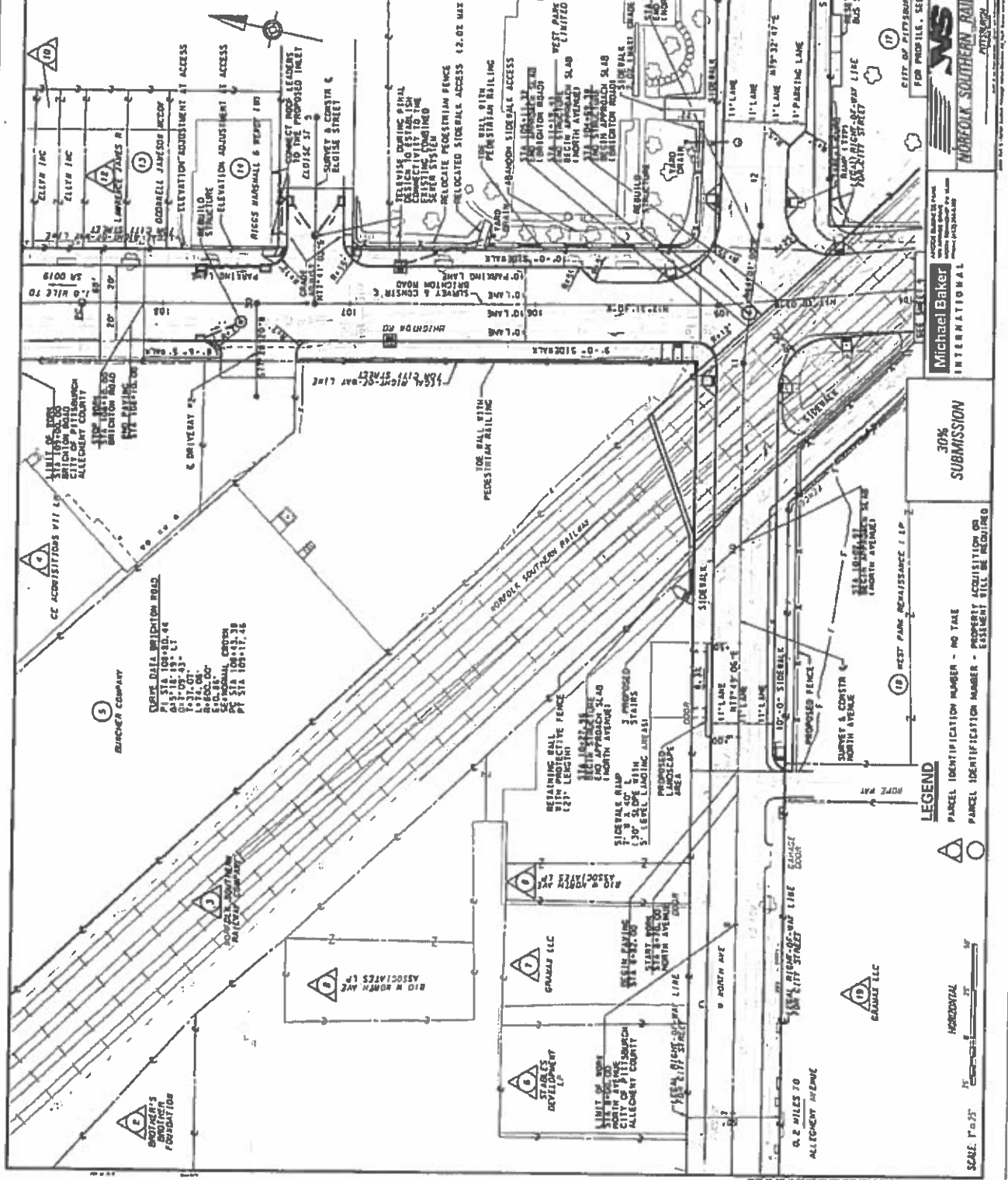


**NORFOLK
SOUTHERN**
NORFOLK SOUTHERN RAILWAY COMPANY

PITTSBURGH, PENNSYLVANIA
HIGHT AVE
TYPICAL SECTIONS (SHEET 1)

PROPOSED STRUCTURE DATA	
STATION	NORTH AVE OVER NORFOLK SOUTHERN RAILWAY
TYPE	PRESTRESSED CONCRETE SPREAD BOX BEAM
SPAN LENGTH	65'-9"
UNDERCLEARANCE	21'-0"
CLEAR ROADWAY WIDTH	33'-0"
SKIN	65'-20" 32" 1 AT FASCIA BEAM
STRUCTURE NO.	1-STEEL
RECOMMENDED DATE	TBD

EXISTING BRIDGE STRUCTURE DATA	
STATION	N/A
TYPE	STEEL THROUGH GIRDER
SPAN LENGTH	50'-0"
UNDERCLEARANCE	18'-3"
CLEAR ROADWAY WIDTH	30'-0"
SKIN	42'-14" 40" 1 AT EAST FASCIA BEAM
STRUCTURE NO.	N/A
BUILD DATE	MAY 1929



30% SUBMISSION

LEGEND
 PARCEL IDENTIFICATION NUMBER - NO TAIL
 PARCEL IDENTIFICATION NUMBER - PROPERTY ACQUISITION OR EASEMENT WILL BE REQUIRED

SCALE: 1"=20'
 HORIZONTAL
 0' 10' 20' 30' 40' 50' 60' 70' 80' 90' 100'

Michael Baker
 INTERNATIONAL
 NORFOLK SOUTHERN RAILWAY COMPANY
 PITTSBURGH, PENNSYLVANIA
 NORTH AVENUE
 PLAN SHEET 1 OF 2

PROPOSED STRUCTURE DATA	
STATION	10+13.65
TYPE	PRESTRESSED CONCRETE SPREAD BOX BEAM
SPAN LENGTH	65'-3"
UNDERCLEARANCE	21'-4"
CLEAR ROADWAY WIDTH	33'-0"
SKIN	6" 28" 32" (AT FASCIA BEAM)
STRUCTURE NO.	L-11111
RECOMMENDED DATE	100

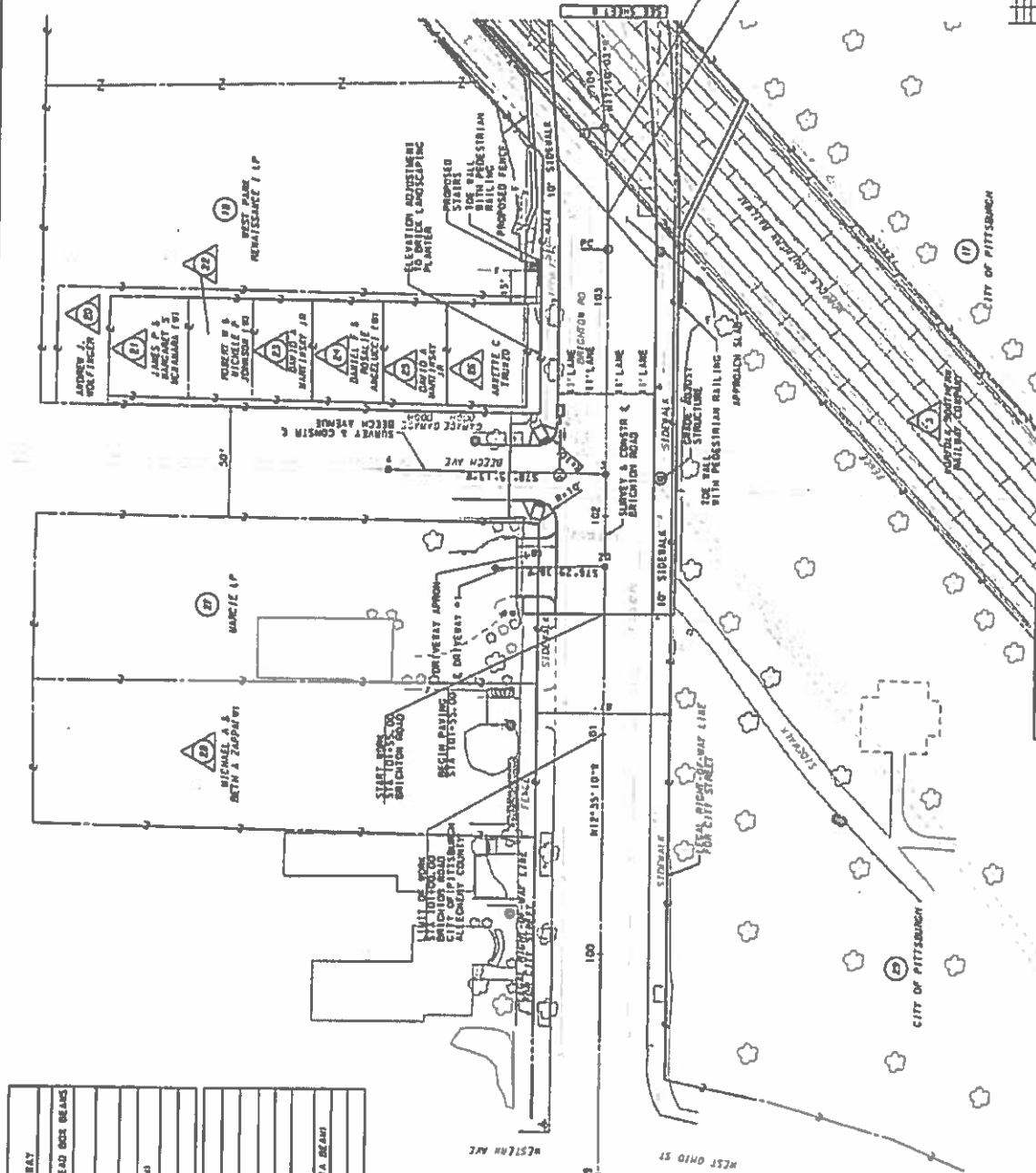
EXISTING BRIDGE STRUCTURE DATA	
STATION	N/A
TYPE	STEEL THROUGH GIRDER
SPAN LENGTH	107'-0"
UNDERCLEARANCE	18'-3"
CLEAR ROADWAY WIDTH	35'-0"
SKIN	4" 14" 40" (AT EAST FASCIA BEAM)
STRUCTURE NO.	N/A
BUILT DATE	MAY 1929

LEGEND

- PARCEL IDENTIFICATION NUMBER - NO TALE
- PARCEL IDENTIFICATION NUMBER - PROPERTY ACQUISITION OR EASEMENT WILL BE REQUIRED

SCALE: 1"=25'

HORIZONTAL



CURVE DATA BRITTON ROAD
 PI STA 101+50.00
 PTA STA 101+33.17
 PVT STA 101+00.00
 L=150.00'
 E=150.00'
 DELTA=90.00°
 R=106.10'
 PC STA 101+00.00
 PT STA 101+15.17

FOR PROFILE, SEE SHEETS 11 & 12

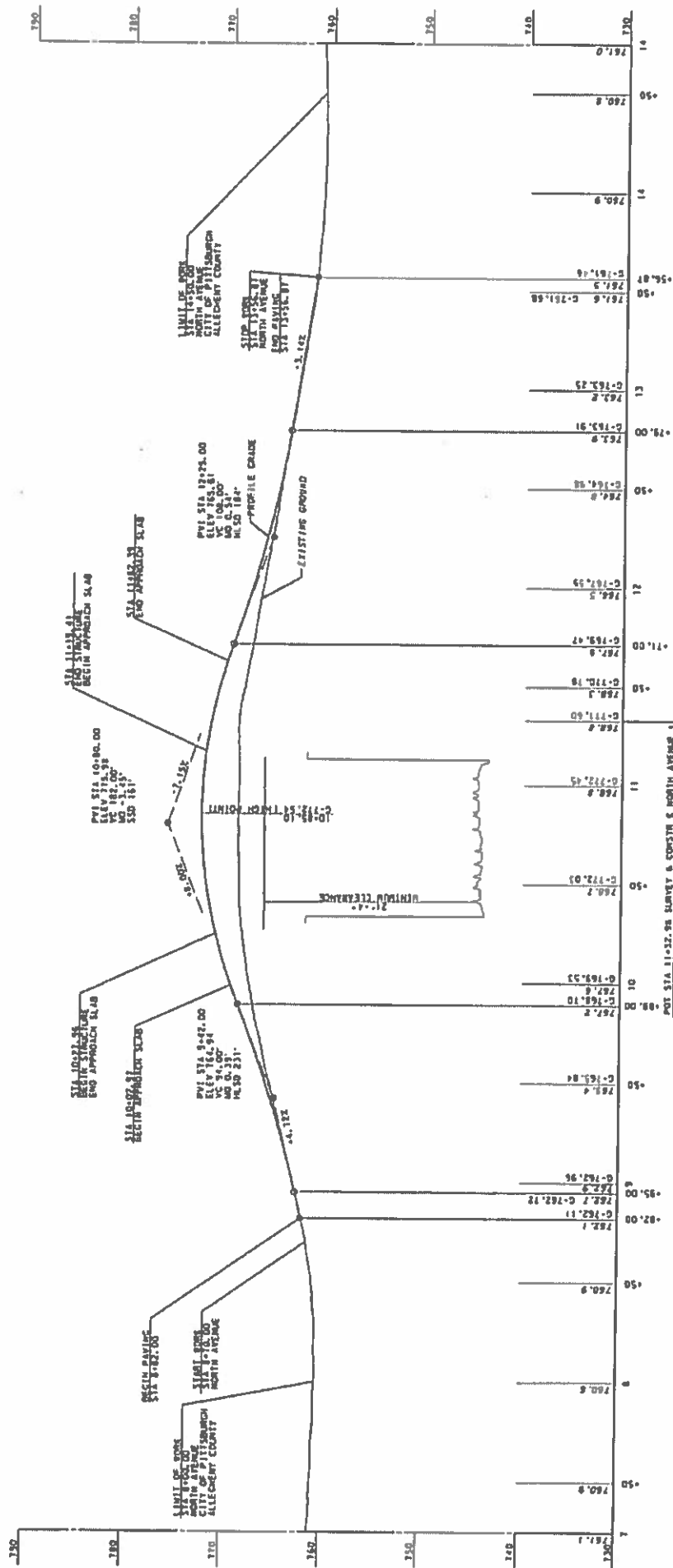
NORFOLK SOUTHERN RAILWAY COMPANY
 PITTSBURGH, PENNSYLVANIA
 NORTH AVENUE
 PLAN SHEET 2 OF 2

Michael Baker INTERNATIONAL
 30% SUBMISSION

DATE: 10/13/10

PROPOSED STRUCTURE DATA	
STATION	10+22.69
TYPE	PRESTRESSED CONCRETE SPREAD BOX BEAMS
SPAN LENGTH	65'-9"
UNDERCARRIAGE	21'-4"
CLEAR ROADWAY WIDTH	33'-0"
DATE	6/1/80
STRUCTURE NO.	1-XXXX
RECOMMENDED DATE	1980

EXISTING BRIDGE STRUCTURE DATA	
STATION	N/A
TYPE	STEEL THROUGH GIRDER
SPAN LENGTH	60'-0"
UNDERCARRIAGE	18'-3"
CLEAR ROADWAY WIDTH	35'-0"
DATE	N/A
STRUCTURE NO.	N/A
BUILT DATE	MAY 1929



PROFILE - NORTH AVENUE

SCALE: 1"=25'

SCALE: 1"=5'

Michael Baker
INTERNATIONAL

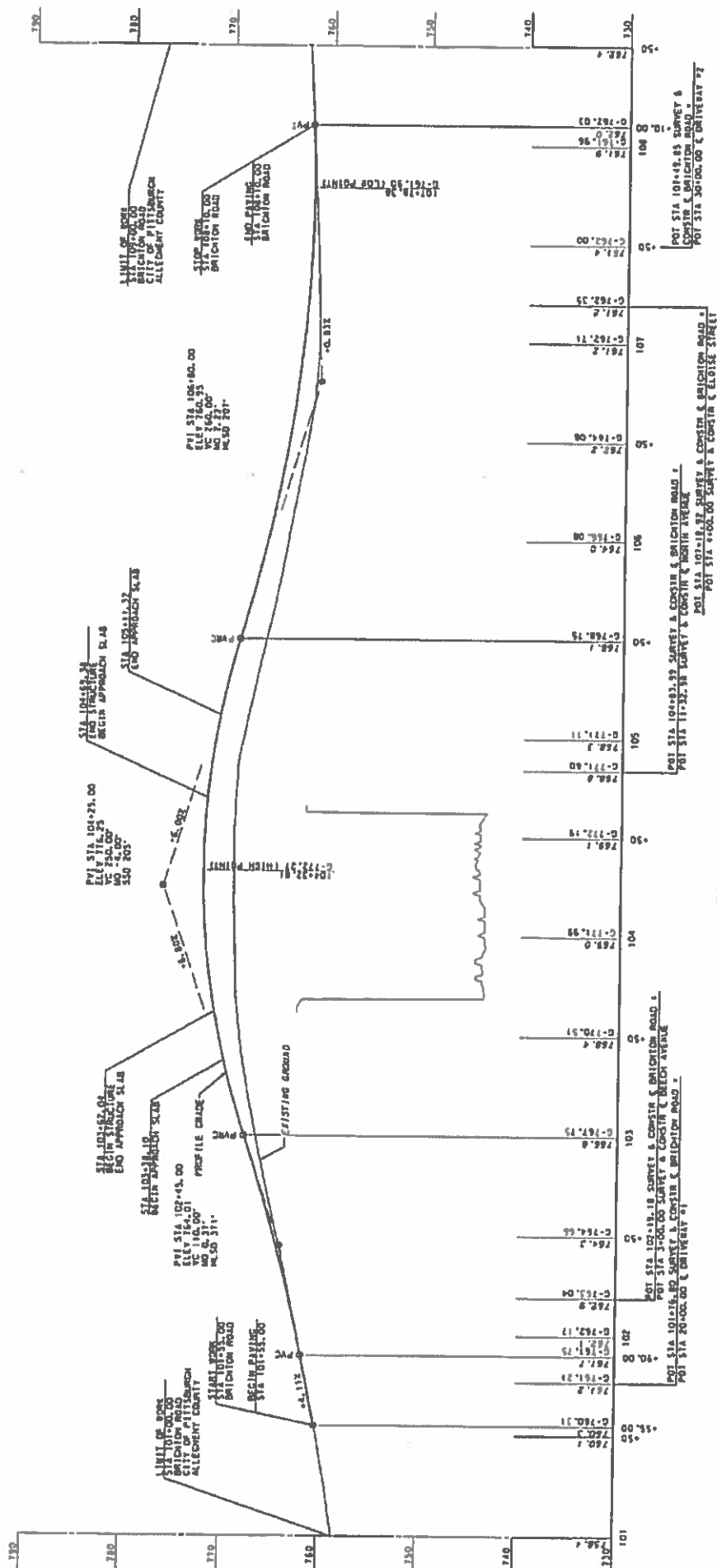
30%
SUBMISSION

NORFOLK SOUTHERN RAILWAY COMPANY

PITTSBURGH, PENNSYLVANIA
NORTH AVENUE
PROFILE - SHEET 1 OF 3

PROPOSED STRUCTURE DATA	
STATION	101+00.00
TYPE	PRESTRESSED CONCRETE SPREAD BOX BEAMS
SPAN LENGTH	45'-9"
UNDERCLEARANCE	21'-0"
CLEAR ROADWAY WIDTH	33'-0"
SEER	61'-20" 33" (AT EAST FACIA BEAM)
STRUCTURE NO.	L-STEER
RECOMMENDED DATE	1980

EXISTING BRIDGE STRUCTURE DATA	
STATION	N/A
TYPE	STEEL THROUGH GIRDER
SPAN LENGTH	60'-0"
UNDERCLEARANCE	18'-3"
CLEAR ROADWAY WIDTH	36'-0"
SEER	42'-14'-00" (AT EAST FACIA BEAM)
STRUCTURE NO.	N/A
BUILT DATE	WAR 1929



PROFILE - BRIGHTON ROAD

SCALE: 1"=25'

SCALE: 1"=5'

30% SUBMISSION

Michael Baker INTERNATIONAL

FOR PLANS, SEE SHEETS 1 & 2

NORFOLK SOUTHERN RAILWAY COMPANY

PITTSBURGH, PENNSYLVANIA
NORTH AVENUE
PROFILE - SHEET 2 OF 3

DATE: 10/1/80

BY: J. B. BAKER

101

EXHIBIT B

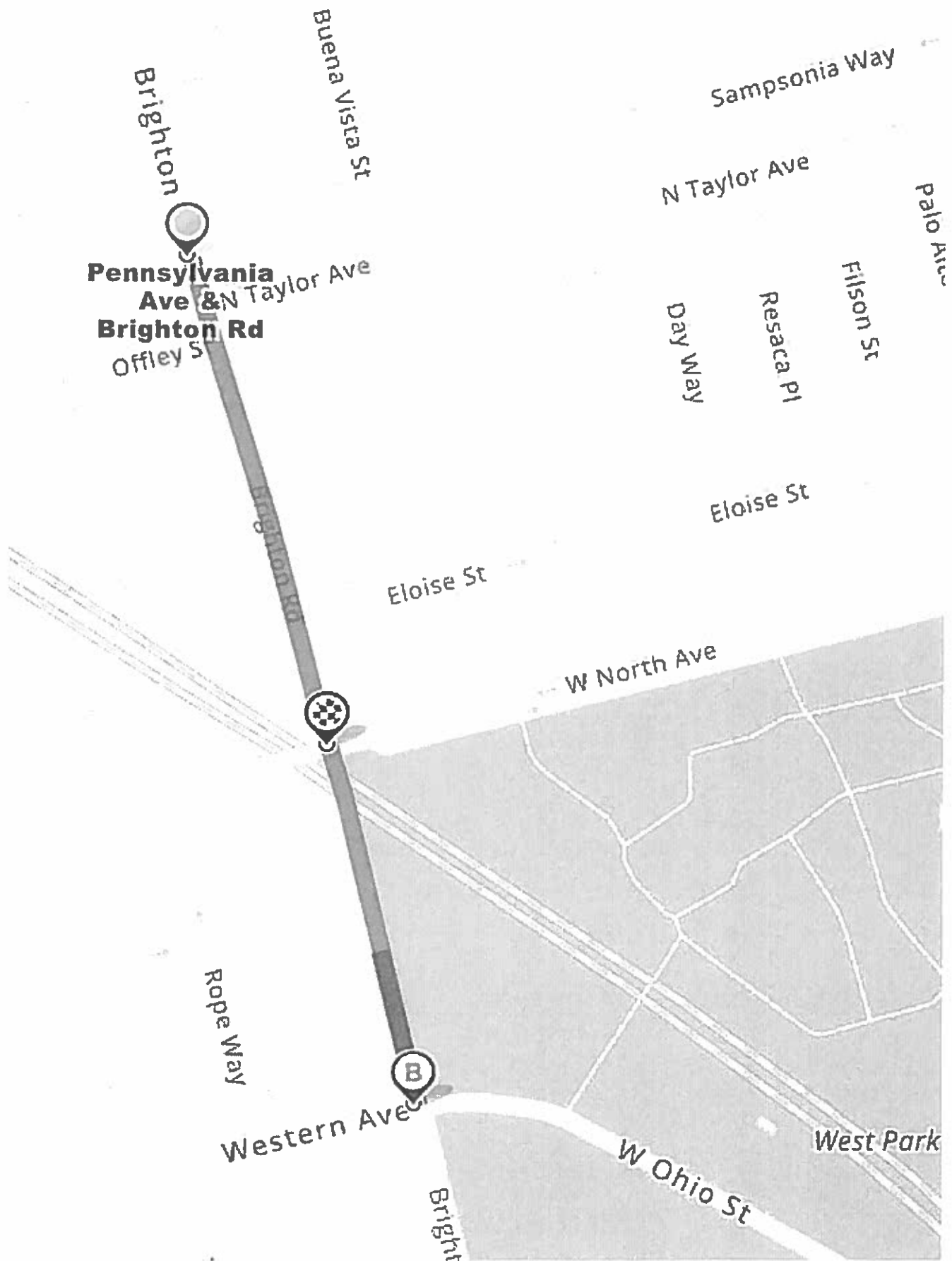


EXHIBIT C

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 17, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

Application of the City of Pittsburgh for approval of the alteration of the railroad crossings at Ridge Avenue, West Ohio Street, and North Avenue and Brighton Road Bridges which carry said Streets above the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County; as amended by the City of Pittsburgh to request approval of the abolition of the railroad crossing at Ridge Avenue

A-00119379

ORDER

BY THE COMMISSION:

We adopt as our action the Recommended Decision Upon Remand of Administrative Law Judge Larry Gesoff dated July 10, 2006;

THEREFORE,

IT IS ORDERED:

1. That the Application of the City of Pittsburgh at Docket No. A-00119379 for approval of the alteration of the railroad crossings at Ridge Avenue, West Ohio Street, and North Avenue and Brighton Road Bridges which carry said Streets above the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County; as amended by the

City of Pittsburgh to request approval of the abolition of the railroad crossing at Ridge Avenue by removing the structure carrying Ridge Avenue above the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County, is approved

2. That the City of Pittsburgh, at its initial cost and expense, within twenty-one (21) months from the date of entry of the Opinion and Order, furnish all material and do all work necessary to prepare and submit to the Commission for approval and to all parties of record for examination, a set of preliminary design drawings for the removal of the structure carrying Ridge Avenue over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh and for the abolition of the Ridge Avenue crossing.

3. That the City of Pittsburgh, at its initial cost and expense, within twenty-one (21) months from the date of entry of the Opinion and Order, furnish all material and do all work necessary to prepare and submit to the Commission for approval, and to all parties of record for examination, a set of preliminary design plans for the replacement of the structure carrying West Ohio Street over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, the said new structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads.

4. That the City of Pittsburgh, at its initial cost and expense, within twenty-one (21) months from the date of entry of the Opinion and Order, furnish all material and do all work necessary to prepare and submit to the Commission for approval, and to all parties of record for examination, a set of preliminary design plans for the repair of the structure carrying North Avenue and Brighton Road over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh; the said repairs to include, but not be limited to, repairs to the north end of the west girder and to floor beam No. 29 and the reconstruction of the sidewalks; the said structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads.

5. That the City of Pittsburgh, at its initial cost and expense, within thirty-one (31) months from the date of issuance of the Opinion and Order, furnish all material and do all work necessary to prepare and submit to the Commission for approval, and to all parties of record for examination, a set of detailed construction plans:

(a) for the removal of the structure carrying Ridge Avenue over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh and for the abolition of the Ridge Avenue crossing;

(b) for the replacement of the structure carrying West Ohio Street over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, the said new structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads; and

(c) for the repair of the structure carrying North Avenue and Brighton Road over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh; the said repairs to include, but not be limited to, repairs to the north end of the west girder and to floor beam No. 29 and the reconstruction of the sidewalks; the said structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads.

6. That the detailed construction plans referred to in paragraph five of this order shall take into consideration the historic and aesthetic nature of the Allegheny Commons Park and the recreational activities conducted therein.

7. That upon notification of Commission approval of the detailed construction plans referred to in paragraph five of the Opinion and Order, the City of Pittsburgh, at its initial cost and expense, within two (2) years from the date of entry of the Commission's Order approving of the plans, furnish all material and do all work necessary to complete the work ordered herein in a manner satisfactory to this Commission, and that, on or before the said two (2) year period expires, the City of Pittsburgh report to this Commission the date of actual completion of the work.

8. That the City of Pittsburgh notify all parties of record in writing of the actual date when work will be started at least ten (10) days before the actual start of work on the projects.

9. That the City of Pittsburgh, Norfolk Southern Corporation, and the non-carrier utilities involved cooperate with each other so that the operation or facilities of any of the parties will not be endangered or unnecessarily impeded.

10. That while the projects ordered herein are being carried out over, across and adjacent to its tracks, Norfolk Southern Corporation cooperate with the City of Pittsburgh and conduct its operations in the vicinity of the crossing in a safe and controlled manner.

11. That Norfolk Southern Corporation, at its initial cost and expense, furnish all material and do all work necessary to make any other adjustments to its facilities required as a result of the construction of this improvement.

12. That Norfolk Southern Corporation, at its initial cost and expense, furnish and maintain any watchers, flaggers, construction inspectors and engineering services as deemed necessary by Norfolk Southern Corporation to protect its operations and facilities while the improvement is being constructed over, across and adjacent to its track.

13. That the non-carrier utilities involved, if any, at their initial cost and expense, provide all materials and perform all work necessary to alter or relocate its facilities as necessary to accommodate construction of the work herein ordered.

14. That the City of Pittsburgh, at its initial cost and expense, furnish all material and do all work necessary to establish, mark and maintain suitable detours in accordance with the Manual on Uniform Traffic Control Devices, if necessary, for the vehicular traffic desiring to use the crossings during the time the crossings are being repaired.

15. That the City of Pittsburgh, at its initial cost and expense, furnish all material and do all work necessary to erect and maintain substantial permanent barricades on both highway approaches to the crossings to safely prevent vehicular traffic from using or attempting to use the crossings; and, if necessary, to erect and maintain "ROAD CLOSED" signs on both highway approach barricades and any other permanent type signs and reflectors as required in the Manual of Uniform Traffic Control Devices.

16. That pending completion of the projects ordered herein, the City of Pittsburgh, at its sole cost and expense, furnish all material and do all work necessary to maintain the roadways and sidewalks on the bridges in a safe and satisfactory condition.

17. That pending completion of the projects ordered herein, Norfolk Southern Corporation, at its sole cost and expense, furnish all material and do all work necessary to maintain the substructures, necessary supports and superstructures of the structures which are the subject of this proceeding in a safe and satisfactory condition.

18. That the existing crossing, above grade, carrying Ridge Avenue over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County is abolished upon completion of the work ordered in paragraph number 5 of the Opinion and Order.

19. That after the City of Pittsburgh reports to this Commission the date of actual completion of the work, a further hearing be held for the purpose of allocating the costs of the projects among the parties and of allocating further maintenance responsibilities.

20. That this order, insofar as it imposes any costs on any of the parties, is without prejudice to any party's right to recover all or part of such costs incurred from others in accordance with any lawful agreement.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 17, 2006

ORDER ENTERED: August 21, 2006

EXHIBIT D

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 21, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
John F. Coleman, Jr.
Wayne E. Gardner
Robert F. Powelson

Application of the City of Pittsburgh for approval of the alteration of the railroad crossings at Ridge Avenue, West Ohio Street, and North Avenue and Brighton Road Bridges which carry said Streets above the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County; as amended by the City of Pittsburgh to request approval of the abolition of the railroad crossing at Ridge Avenue

A-00119379

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition is the Joint Motion of the City of Pittsburgh (City) and Norfolk Southern Railway Company (Norfolk Southern, together with the City, Joint Parties) for Clarification of the Commission's Order (Motion), filed on September 5, 2006. The Motion refers to the Order entered herein on August 21, 2006 (*2006 Order*), relative to the above-captioned proceedings. No response to the Motion has been filed.

In response to our Secretarial Letter issued September 7, 2010, the City filed, on behalf of itself and Norfolk Southern, a Supplement to the Motion (Supplement) on September 21, 2010. On October 14, 2010, the City also filed a Correction to the Supplement.

History of the Proceedings

The subject of this proceeding is the disposition of three rail-highway crossings located in the North Side section of the City. Individually, the crossings are the Ridge Avenue crossing, the West Ohio Street crossing, and the North Avenue and Brighton crossing (the North Avenue crossing). Bridges at the crossings cross over railroad tracks owned by Pennsylvania Lines, LLC, and operated by Norfolk Southern.

On November 4, 2002, the City filed the above-captioned Application seeking approval of the alteration of the bridges at the Ridge Avenue, West Ohio Street, and North Avenue crossings. At the same time, the City filed an Application, at Docket No. A-00119738, for leave to continue the existing prior overhead clearance of nineteen feet for the three bridges over tracks operated by Norfolk Southern in the City. Two of the bridges are in a historic district and the third is contiguous to the historic district. On December 23, 2002, Norfolk Southern filed a Protest to the Applications and on January 22, 2003, the Pennsylvania Department of Transportation (PennDOT) filed an Answer to the Protest.

The City asserted that the bridges needed to be repaired, rehabilitated or replaced. The Application at Docket No. A-00119379 sought the approval and cost allocation by the Commission for the repair, rehabilitation or replacement of each bridge.

Norfolk Southern challenged the Commission's jurisdiction, and also opposed the City's request for continuation of the prior vertical clearance of nineteen feet. Certain utilities have facilities over or alongside Norfolk Southern's tracks.

Administrative Law Judge (ALJ) Larry Gesoff issued a Recommended Decision (R.D.) on August 13, 2003, recommending, among other things, that the Application at Docket No. A-00119378 be dismissed as moot because the City had no standing to request an exemption from the twenty-two foot clearance requirements because the City is not a "carrier" under Section 33.1 of our Regulations, 52 Pa. Code § 33.1. Additionally, the ALJ noted the Commission's broad authority to consider clearances in its review of a proposed project. The ALJ also recommended that the Application of the City at Docket No. A-00119379 be approved. R.D. at 24-25.

On September 2, 2003, Norfolk Southern filed Exceptions to the Recommended Decision. On September 11, 2003, the City filed Reply Exceptions.

By Opinion and Order entered July 26, 2004 (*July 2004 Order*), the Commission dismissed the Application at Docket No. A-00119738 as moot. The Commission ruled that the twenty-two foot clearance requirements found in its regulations at 52 Pa. Code § 33.121 do not apply because the City's work is within the scope permitted by 52 Pa. Code § 33.128(b) ("this subchapter does not apply to repairs, renewals, maintenance . . . in substantially the same location and within the general plan of existing installations if existing clearances are not reduced"). In addition, the Commission noted that 52 Pa. Code § 33.128(c) states that this section shall not be construed as limiting the authority or jurisdiction of the Commission.

The *July 2004 Order* also approved the Application at Docket No. A-00119739, dismissed the Protest of Norfolk Southern, and directed the City to do the following: (1) submit detailed construction plans for the replacement of the structures

carrying Ridge Avenue and West Ohio Street over the tracks operated by Norfolk Southern at the existing clearance; (2) submit detailed construction plans for the repair of the structure carrying North Avenue and Brighton Road over the tracks operated by Norfolk Southern at the existing clearance; and (3) upon approval of the plans, to complete the work called for and to notify the Commission of the date of the completion of the work. The *July 2004 Order* concluded with the direction that a further hearing be held for the purpose of allocating the costs of the projects among the parties and of allocating further maintenance responsibilities.

Norfolk Southern appealed the Commission's *July 2004 Order* to the Pennsylvania Commonwealth Court. On February 25, 2005, the Commonwealth Court issued an Order holding that the Commission's Regulation at 52 Pa. Code § 33.121 (requiring twenty-two foot clearances) applies because 52 Pa. Code § 33.128(c) pertains only to Section 33.128, not to the entire Subchapter C. *Norfolk Southern Railway Company v. Pa. PUC*, 870 A.2d 942 (Pa. Cmwlth. 2005). The Commonwealth Court vacated the Commission's *July 2004 Order* and remanded the case to the Commission for the purpose of determining how the twenty-two foot clearance will be achieved.

On December 1, 2005, the Supreme Court of Pennsylvania denied the Commission's petition for allowance of appeal from the Order of the Commonwealth Court.

The Commission held an initial Prehearing Conference on February 15, 2006, and a second Prehearing Conference on May 17, 2006.

On May 11, 2006, the City filed an Amended Application, withdrawing its Application with respect to the alteration of the Ridge Avenue bridge and seeking Commission authority to remove the existing bridge and to abolish the Ridge Avenue crossing. During the Prehearing Conference, the City stated that, in addition to seeking

removal of the Ridge Avenue bridge and abolition of the crossing, it would reconstruct the West Ohio Street bridge with a clearance of twenty-two feet above the existing track bed and would not seek to have the elevation of the track bed lowered.

The Interim Order issued May 23, 2006, directed the City to publish notice of its Amended Application and to file proof of same with the Commission. On June 8 and 15, 2006, the City published notice of its Amended Application in the *Pittsburgh Post-Gazette*. The notice stated that Protests to the Amended Application must be submitted to the Commission on or before June 30, 2006. The Commission did not receive any Protests by the fifteen day deadline. On June 30, 2006, the City filed Proof of Publication of the notice with the Secretary of the Commission.

ALJ Gesoff reached nine Findings of Fact and four Conclusions of Law in his Recommended Decision Upon Remand, issued in July of 2006. In his Recommended Decision on Remand, the ALJ recommended, *inter alia*, that the Application be approved and that the City, within twenty-one months from the date of entry of the Commission's Order, prepare and submit a set of preliminary design drawings for the work to be performed on the bridges. R.D. at 8-9. The Commission, in its *August 2006 Order*, adopted the Recommended Decision Upon Remand of ALJ Gesoff. The instant Motion was filed on September 5, 2006.

Due to the lapse of time, we issued a Secretarial Letter on September 7, 2010, which, *inter alia*, provided the Joint Parties with an opportunity to file a Supplement to the Joint Motion in order to update the Commission on events occurring since the filing of the Joint Motion. On September 21, 2010, the Joint Parties filed the Supplement. On October 14, 2010, the City filed a Correction to the Supplement.

Discussion

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Legal Standards

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a Petition for Reconsideration, Modification or Clarification were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 1982 Pa. P.U.C. LEXIS 4 (1982). *Duick* held that a petition for rehearing under Subsection 703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick* at 558. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole, or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed. *Duick* at 559. A petition seeking reopening of the record (more properly one for rehearing) may be entertained as a petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g),

if the newly discovered evidence was not in existence, or was not discoverable through the exercise of due diligence, prior to the expiration of the time within which to file a petition for rehearing, under the provisions of 66 Pa. C.S. § 703(f). *Id.*

Positions of the Parties

The *August 2006 Order* relates to three bridges crossing the tracks of Norfolk Southern in the City, as follows: (1) Ridge Avenue bridge, this bridge will be removed, pursuant to Paragraph Nos. 2 and 5(a) of the Order; (2) West Ohio Street bridge, this bridge will be replaced with a new bridge, pursuant to Paragraph Nos. 3 and 5(b) of the Order; and (3) North Avenue and Brighton Road bridge, this bridge will be repaired as described (west girder, floor beam no. 29, and sidewalk), pursuant to Paragraph Nos. 4 and 5(c) of the Order.

In their Motion, the Joint Parties request that certain language pertaining to the North Avenue and Brighton Road bridge, found at the end of Paragraph Nos. 4 and 5(c), be removed from our *August 2006 Order*. That language reads as follows:

“ . . . the said structure to maintain a clearance of not less than 22-feet above the track bed.”

August 2006 Order at 2, 3.

The reason that the Joint Parties want this amendment to the *August 2006 Order* is that the North Avenue and Brighton Road bridge currently has a clearance of nineteen feet above Norfolk Southern's tracks, and the ordered repairs will not increase the clearance level of this bridge. Motion at ¶ 3. Additionally, no Party in this case has requested that the clearance level of the bridge be increased to twenty-two feet. The Joint Parties aver that the bridge, after the repairs ordered by the Commission, will be in good

working order and will not require replacement or substantial modification of the sort necessary to increase its clearance level. Motion at ¶ 4.

By Secretarial Letter of September 7, 2010, the Joint Parties were given an opportunity to file a Supplement to the Joint Motion in order to update the Commission on events occurring since the filing of the Joint Motion. The Parties stated the following, with respect to the North Avenue and Brighton Road Bridge:

The North Avenue and Brighton Road Bridge: In the summer of 2010, the City submitted to Norfolk Southern complete design plans for the repair of the bridge. Norfolk Southern has communicated to the City that it will wait for the Commission's ruling on the September 5, 2006 Joint Motion of the Parties prior to approving the plans.

The design plans maintain the existing clearance of nineteen feet above Norfolk Southern's tracks.

The design plans have not been submitted to the Commission in anticipation of a ruling on the Joint Motion.

As stated in the Joint Motion, at ¶ 4: "[N]o party in this case, [including] neither the City nor Norfolk Southern, has requested that the clearance level of the North Avenue and Brighton Road Bridge be increased to twenty-two feet at this time. This bridge, after the repairs ordered by the Commission, will be in good working order and at this time will not require replacement or substantial modification of the sort necessary to increase its clearance level."

As stated in the Joint Motion, at ¶ 3: "the North Avenue and Brighton Road Bridge currently maintains a clearance of 19-feet above Norfolk Southern's tracks, and the ordered repairs (to a girder, a floor beam, and the sidewalk) will not increase the clearance level of this bridge.

The North Avenue and Brighton Road Bridge is currently open to traffic.

In its Correction to the Supplement, the City stated that, in fact, it had not submitted design plans to Norfolk Southern in the summer of 2010. The City continued that the plans for the North Avenue and Brighton Road Bridge have now been submitted to Norfolk Southern, via e-mail, for its approval. Correction at 2.

Our Secretarial Letter of September 7, 2010, also requested that the Parties address Section 33.127(b) of our Regulations, 52 Pa. Code § 33.127(b), which states as follows:

If, in any particular case, exemption from any of the requirements of this subchapter is deemed necessary by the carrier concerned, the Commission may grant an application by such carrier for such exemption if accompanied by a full statement of conditions existing and the reason why such exemption is requested.

In their Supplement, the Joint Parties averred that this Section is inapplicable because the North Avenue and Brighton Road bridge will be repaired and not reconstructed. According to the Joint Parties, Section 33.126 is not applicable in the case of that bridge, because that Section addresses structures which are “relocated or reconstructed” at a lesser clearance, and requires of those a Section 33.127 exemption.

Disposition

We begin by noting that the Motion before us is styled a Motion for Clarification. We believe it is more properly considered a Motion for Amendment, because it requests that certain language in the Order be removed from the Order.

The Motion includes no discussion of the *Duick* standards. Norfolk Southern previously took the position in this litigation that the 22-foot clearance

requirement of 52 Pa. Code § 33.121 applies to this bridge. In the *July 2004 Order*, the Commission rejected this argument. Norfolk Southern appealed, and the Commonwealth Court engaged in an extensive analysis of the Commission's regulations regarding the 22-foot clearance requirement. The Commonwealth Court agreed with Norfolk Southern that the Commission does not have the authority to waive the 22-foot clearance requirement absent an application from the railroad for an exemption from the regulation pursuant to 52 Pa. Code § 33.127(b) (quoted above). Upon remand from the Commonwealth Court, this Commission required compliance with the 22-foot clearance requirement. *2006 Order* at Ordering Paragraph 4 and 5(c).

The Motion does not identify any factual or legal argument that was overlooked by this Commission in determining that the 22-foot clearance requirement applies in this case. In particular, the Joint Parties have not demonstrated that this case is no longer controlled by the Commonwealth Court's decision that the 22-foot clearance requirement of Section 33.121 applies and that this Commission is without authority to waive that requirement absent an application from the railroad for an exemption pursuant to Section 33.127(b).¹ The fact that substantial costs will need to be incurred in order to comply with the 22-foot clearance requirement does not, in and of itself, justify a change in the *2006 Order*. When we rendered our *2006 Order*, we were certainly aware that compliance with the Order would require a substantial expense.

Finally, we note that our *2006 Order* established certain deadlines for the City, with respect to the North Avenue and Brighton Road bridge. Those deadlines apparently have not been met, because the Joint Parties have been awaiting a decision on the Joint Motion. We will therefore establish new deadlines for those tasks. In all other respects, the *2006 Order* shall continue to have full force and effect.

¹ We do not consider the Joint Motion an application by the carrier for an exemption request pursuant to 52 Pa. Code § 33.127(b).

Conclusion

On review of the record herein, including our *2006 Order*, the Motion filed by the Joint Parties in September of 2006, and the recently-filed Supplement and Correction thereto, we shall deny the Joint Parties' Motion; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Motion filed by the City of Pittsburgh and Norfolk Southern Railway Company for Clarification of the Commission's Order entered August 21, 2006, filed on September 5, 2006, is hereby denied.
2. That the City of Pittsburgh, at its initial cost and expense, within twenty-one (21) months from the date of entry of this Opinion and Order, furnish all material and do all work necessary to prepare and submit to this Commission for approval, and to all Parties of record for examination, a set of preliminary design plans for the repair of the structure carrying North Avenue and Brighton Road over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh; the said repairs to include, but not be limited to, repairs to the north end of the west girder and to floor beam No. 29 and the reconstruction of the sidewalks; the said structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads.
3. That the City of Pittsburgh, at its initial cost and expense, within thirty-one (31) months from the date of entry of this Opinion and Order, furnish all material and do all work necessary to prepare and submit to the Commission for approval, and to all parties of record for examination, a set of detailed construction plans for the repair of the structure carrying North Avenue and Brighton Road over the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh; the said repairs to

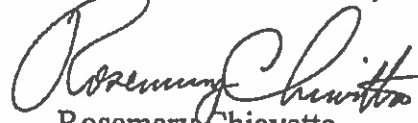
include, but not be limited to, repairs to the north end of the west girder and to floor beam No. 29 and the reconstruction of the sidewalks; the said structure to maintain a clearance of not less than 22-feet above the track bed and otherwise conform to present day design standards and to be capable of carrying existing legal loads.

4. That the detailed construction plans referred to in paragraph 3 of this Opinion and Order shall take into consideration the historic and aesthetic nature of the Allegheny Commons Park and the recreational activities conducted therein.

5. That upon notification of Commission approval of the detailed construction plans referred to in paragraph 3 of this Opinion and Order, the City of Pittsburgh, at its initial cost and expense, within two (2) years from the date of entry of the Commission's Order approving of the plans, furnish all material and do all work necessary to complete the work ordered herein in a manner satisfactory to the Commission, and that, on or before the said two (2) year period expires, the City of Pittsburgh report to this Commission the date of actual completion of the work.

6. That, in all other respects not inconsistent herewith, the Order entered in this matter on August 21, 2006, shall remain in full force and effect.

THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 21, 2010

ORDER ENTERED: October 26, 2010

EXHIBIT E

EXHIBIT E

LIST OF ALL CONCERNED PERSONS, PARTIES AND ENTITIES

Mark Chappell, P.E., Chief
Right-of-Way and Utilities Division
Bureau of Design, Penn DOT
P.O. Box 3362
Harrisburg, PA 17105-3362

Engineering District 11-0
Pennsylvania Dept. of Transportation
Attn: Cheryl Moon-Sirianna, P.E.
45 Thomas Run Road
Bridgeville, PA 15017

Allegheny County Solicitor
Dept., Of Law
445 Fort Pitt Blvd.
Pittsburgh, PA 15219

Verizon Pennsylvania LLC
Attn: Deborah Barum
1026 Hay Street
Pittsburgh, PA 15221

Community College of Allegheny County
Facilities Management Division
Attn: Rich Schlegel
800 Allegheny Ave.
Pittsburgh, PA 15233

Windstream
Attn: Locate Desk Personnel
929 Marthas Way
Hiawatha, IA 52233

NRG Energy Center Pittsburgh
Attn: Bryan Sarti
111 S. Commons Ave.
Pittsburgh, PA 15212

Comcast Cablevision
Attn: Joseph Bechtold
1530 Chartiers Ave.
Pittsburgh, PA 15204

Crown Castle
Attn: Rebecca Caldwell
2000 Corporate Dr.
Canonsburg, PA 15317

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Gina M. D'Alfonso, Esquire
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Harrisburg, PA 17105-8212

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313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Peoples Gas Company LLC
Attn: Debbie Ross
375 North Shore Drive
Pittsburgh, PA 15212

Pittsburgh Water & Sewer Authority
Attn: Rick Obermeier
1200 Penn Avenue
Pittsburgh, PA 15222

Pittsburgh City Dept. of Mobility & Infrastructure
Attn: Karina Ricks
611 Second Ave.
Pittsburgh, PA 15219

Duquesne Light Company
Attn: Shane Thieret
PA-TD
2645 New Beaver Ave.
Pittsburgh, PA 15233

Level 3 Communications LLC
Attn: Level 3 Operator
1025 Eldorado Blvd
Broomfield, CO 80021

Century Link f/k/a Embarq
Attn: George McElvain
Grid No. UT00-D27.34
700 W. Mineral Ave.
Littleton, CO 80120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Norfolk Southern Railway :
Company for approval to reconstruct the :
crossing of the North Avenue/Brighton : Docket No. A-2018-
Road bridge crossing above its tracks in :
the City of Pittsburgh, Allegheny County : *Filed Electronically*
(DOT No. 507450B), and for an exemption :
from the Commission's overhead :
clearance regulations :

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the Application of Norfolk Southern Railway Company, in the above action, this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Mark Chappell, P.E., Chief
Right-of-Way and Utilities Division
Bureau of Design, Penn DOT
P.O. Box 3362
Harrisburg, PA 17105-3362

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Attn: George McElvain
Grid No. UT00-D27.34
700 W. Mineral Ave.
Littleton, CO 80120

Date: December 7, 2018



Linda D. Plantz, Legal Assistant to
Benjamin C. Dunlap, Jr., Esquire

EXHIBIT 2



pennsylvania

DEPARTMENT OF TRANSPORTATION

PA.GOV

BMS2

BRIDGE MANAGEMENT SYSTEM 2

Welcome Eric Setzler

INVENTORY - STRUCTURE HOME

Hide Quick Links

SA01 SR ID: 02730100003067 [GO](#) SA03 BRKEY: 2432 [GO](#) Agency ID: [GO](#) Go To: Inventory - Structure Home [GO](#)

Inventory Links

Structure Home
Agency Bridge
Features Structure
Units Drawing
Notes Structure
Group

Posting
Inspection
Planning
Paint
Design

Inspection Links

Ratings & Schedule
Agency Inspection
Notes & Comments
Element Condition
Fracture Critical

Signing Details
Safety Features
Load Ratings
Underwater

Other Links

Search Structures
Last Search Results
EDMS Documents
Proposed Maintenance
Completed Maintenance
BP Assignment

Reports
Bulletin Board
Validations [GO](#) [GO](#) [GO](#) [GO](#)

Structure Identification

SA01 Structure ID: 02730100003067

SA03 NBI Structure No: 2432

SA02 Name: 301067 N AVE-BRIGHTON RD

Location

SA04 District: 11 - District 11
SA05 County: 02 - Allegheny
SA06 City/Town/Place: 02/301 - PITTSBURGH
SA07 Feature Intersected: N-S RR-ALLEGHENY PARK
SA08 Facility Carried: N AVE&BRIGHTON RD
SA09 Location: 301067 N AVE-BRIGHTON RD
SA10 Latitude: 40d 27' 14.03"
SA11 Longitude: 80d 00' 52.19"
SA12 Bord St:
SA12 FHWA Reg:
Share: 0%

Age and Service

SA15 Year Built: 1905
SA16 Year Reconstruct: 1929
SA17 Type of Service On: 5 - Highway-pedestrian
SA18 Under: 2 - Railroad
SA19 Num Lanes Under:

SA13 Border Struct No: _

SA14 FIPS State: 42 - Pennsylvania

SA14 FIPS Region: 3 - Region 3-Baltimore

Management

SA20 Maint Resp: 27 - Railroad
SA21 Owner: 27 - Railroad
SA23 Agency Admin Area: 21 - SPC MPO

Maintenance Responsibility


VM01 Legis Act Num: _
VM02 Maint Resp Desc: N-S RR & CITY OF PGH

Additional Maintenance Responsibility [+](#)

VM03 Agency Responsible	VM04 Portion	VM05 PUC Docket Num	VM06 Order Date	Action
27 - Railroad	-		01/01/1901	1 2

	2 - Entire excl road			
04 - City/Mun Hwy Agenc	6 - Comb of 7 and 8	-	01/01/1901	 

Deck Information

SB01 Deck Structure Type: 1 - Concrete-in-Place
 SB02 Deck Surface Type: 6 - Bituminous
 SB03 Deck Membrane Type: 0 - None
 SB04 Deck Protection: 0 - None
 SB05 Left: 11.0ft
 Curb Sidewalk Width SB06 Right: 11.0ft
 SB07 Deck Width (O/O): 47.0ft
 SB08 Median Type: 0 - No median 
 SB09 Skew: 45degrees
 SB10 Structure Flared: 0 - No flare

Span Information

SB11 Number of Main Spans: 1
 SB12 Main Span Material: 3 - Steel
 SB13 Main Span Design: 03 - Girder-Floorbeam
 SB14 Number of Approach Spans: 0
 SB15 Approach Span Material:
 SB16 Approach Span Design:
 SB17 Maximum Span Length: 84ft
 SB18 Structure Length: 88ft
 SB19 Deck Area: 4,136 sf
 SB20 Total Length: 88ft

Classification Information

SE01 NBIS Bridge Len: Y - Long Enough
 SE02 Parallel Structure: N - No || bridge exists
 SE03 Temporary Structure: - - Unknown (NBI)
 SE04 Hist Significance: 5 - Not eligible
 SE05 SHPO Key Number: 129729

Agency Items

SE10 ACM Status: B - Unknown; invest needed
 SE11 IR: 0
 SE12 IC: 0
 SE13 ACM Insp Date: MMDDYYYY
 SE14 ACM Qty: UNKNWN - Not Completed

SE15 ACM Num 0
 Loc:
 SE16 ACM ...
 Loc
 Desc 1:
 SE17 ACM
 Desc 2:
 SE24 Bridge Group:

Created on: 11/07/2006 03:01:53 PM
 Created by: 0
 Last Updated 07/26/2018 on: 08:36:54 AM
 Last Updated by: 0

2A01 Structure Notes

200207XXT H B2* CANCEL HDR 8016 XX.X 11XXXX RM = X.XX
 950724TD1 H B1 1,292.34 MACKIN 5025 24.0 115850 XYYYYRM = 636.35
 960725TD2 H B2 1,900.42 MACKIN 6018 35.0 115850 HXXXXYRM = 875.04
 970709TD3 H B1 1,292.34 MACKIN 7025 24.0 115850 PXXXXYRM = X.XX
 980723TD4 H B1 1,292.34 MACKIN 8018 24.0 115850 PXXXXYRM = 665.63
 19990608S H B1 2,282.72 HDR 5022 30.0 116615 RM = 440.72
 200007XXT H B1 CANCEL HDR 6016 XX.X 11XXXX RM = X.XX
 200107XXS H B2* X,XXX.XX HDR 7022 XX.X 11XXXX RM = X.XX
 POSTING NOT REQUIRED ACCORDING TO LOAD FACTOR RATINGS.
 02NORTZZ000067U34 NHRS =22.0/ H B1 / 89114 / 88 XXXXXXXXXXXXXXXXRM= 1,500

301067 N AVE & BRIGHTON RD OVER CONRAIL RR XXXX
DI
THIS LINE IS RESERVED FOR SCOUR EVALUATION
THIS LINE IS RESERVED FOR SCOUR EVALUATION
THIS LINE IS RESERVED FOR SCOUR EVALUATION
MAP D13 D14 HSOR HSCCV SPR CK COMMENT OVER O DATE P/F
THIS LINE IS RESERVED FOR CCV DATA
STAT IR IC ACM INSP ACM QNTY # LOCATION OF ACM
B B 0 0 MMDDYYYY UNKNWN O ***
THIS LINE IS RESERVED FOR SCOUR EVALUATION

You are currently logged in as **esetzler**. Your session will timeout at **2:41**.

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Version no: 005.027

[Release Notes](#)

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing City of Pittsburgh Protest to the application of Norfolk Southern filed at Docket No. A-2018-3006432 this 7th day of February by depositing same in the United States Mail, postage prepaid, addressed to the following:

Mark Chappell, P.E., Chief
Right-of –Way and Utilities Division
Bureau of Design, Penn DOT
P. O. Box 3362
Harrisburg, PA 17105-3362

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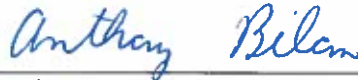
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Anthony Bilan, Assistant Solicitor